

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

October 24, 2013

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Carla Blanton; Mike Cravens, Chair; David Drake; Karen Mundy; Frank Penn; and Bill Wilson. Absent were Eunice Beatty, Patrick Brewer, Mike Owens, and Carolyn Plumlee.

Planning staff members present: Chris King, Director; Bill Sallee; Traci Wade; Tom Martin; Cheryl Gallt; Kelly Hunter; and Stephanie Cunningham. Other staff members present were Tracy Jones, Department of Law; Tim Queary, Urban Forester; Casey Kaucher, Division of Traffic Engineering; and Greg Lengal, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Wilson, seconded by Ms. Mundy, and carried 7-0 (Beatty, Brewer, Owens and Plumlee absent) to approve the corrected minutes of the September 26, 2013, Planning Commission meeting.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, October 3, 2013, at 8:30 a.m. The meeting was attended by Commission members: Mike Owens, Carolyn Plumlee, Frank Penn, Eunice Beatty and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Dave Jarman, Kelly Hunter and Denise Bullock, as well as Lieutenant Greg Lengal, Division of Fire & Emergency Services and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

1. FINAL SUBDIVISION PLANS

- a. **PLAN 2013-108F: GRIFFTOWN, LLC PROPERTY (12/2/13)*** - located at 128-132 York Street.
(Council District 1) **(Randy Martin)**

Note: The Planning Commission postponed this plan at their October 10, 2013, meeting.

The Subdivision Committee Recommended: Postponement. There are questions on compliance with Article 4-5(a) of the Zoning Ordinance governing non-conforming lots.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Discuss whether there are separately billed utilities for these dwellings.
9. Discuss possible need for a zone change.

Staff Presentation: Ms. Gallt presented this final subdivision plan, briefly orienting the Commission to the location of the subject property to the east of North Limestone Street, between Loudon Avenue and Seventh Street.

Ms. Gallt stated that the applicant is proposing to subdivide the subject lot into three lots, which would be non-conforming with regard to lot size and frontage. She said that the Subdivision Committee recommended postponement of this plan, with the nine conditions as listed on the agenda. Since that meeting, the applicant has satisfied conditions #8 and #9, which refer to the non-conforming lot requirements of Article 4-5 of the Zoning Ordinance.

Ms. Gallt explained that, should the Planning Commission choose to approve this plan, they would need to make reference to a finding that separate utility connections serve each of the residences on the property, and that each

* - Denotes date by which Commission must either approve or disapprove request.

residence has been utilized in a separate and distinct manner. The staff provided copies of that finding prior to the start of the hearing on this item. Ms. Gallt stated that the staff is now recommending approval of this request, deleting conditions #8 and #9.

Petitioner Representation: Randy Martin, engineer, stated that the petitioner is in agreement with the staff's recommendations.

Citizen Comment: There were no citizens present to comment on this matter.

Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 7-0 (Beatty, Brewer, Owens, and Plumlee absent) to approve PLAN 2013-108F: GRIFFTOWN, LLC PROPERTY, subject to the first seven conditions as listed on the agenda; deleting conditions #8 and #9, and making the following finding for compliance with Article 4-5(a) of the Zoning Ordinance:

1. Evidence has been presented (and documented into the file) demonstrating that 128, 130 and 132 York Street, were and are three separate residences, and are served by separate utility connections for gas, electric, water, and telephone service.
2. All three residences are recognizably separate, free-standing single family structures, which were built on the same lot.
3. Allowing the subdivision of this lot will not constitute a material change in the use of the properties, and will comply with Article 4-5(a) of the Zoning Ordinance.

- b. PLAN 2013-110F: MAPLELEAF SUBDIVISION, UNIT 1 (AMD) (12/2/13)* - located at 3140-3150 Mapleleaf Drive.
(Council District 7) **(Palmer Engineering)**

Note: The Planning Commission postponed this plan at their October 10, 2013, meeting. The purpose of this amendment is to subdivide one lot into five lots.

The Subdivision Committee Recommended: Postponement. There are questions regarding several conflicts with the proposed property lines and the approved development plan.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Correct plan title to read: "Amended Final Record Plat."
10. Addition of name and address of property owner and developer.
11. Clarify that Lot 9 is not a part of this plat (with dashed lines).
12. Remove building information on adjacent property.
13. Label lots in numerical order (consistent with plan notes).
14. Addition of purpose of amendment note.
15. Addition of notes from previous plat.
16. Addition of street cross-sections from previous plat.
17. Addition of site statistics such as zoning, acres, number of lots, etc.
18. Remove "zoning requirement" note.
19. Discuss building wall conflicts with proposed property lines.

Staff Presentation: Ms. Gallt presented a rendering of this amended final record plan, briefly orienting the Commission to the location of the subject property on the south side of Man O' War Boulevard at Todds Road, just north of Palumbo Drive. She stated that the applicant is proposing to subdivide one lot into five lots.

Ms. Gallt stated that, at their meeting three weeks ago, the Subdivision Committee recommended postponement, due to concerns about conflicts between the proposed property lines and the approved development plan. Since that meeting, the staff has received a new minor amended development plan, which will allow the buildings to be shifted slightly in order to resolve the building and property line conflicts. The applicant also filed a revised copy of the record plat, which satisfied several of the original 19 conditions for approval. The staff is now recommending approval, subject to the following revised conditions:

* - Denotes date by which Commission must either approve or disapprove request.

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. ~~Denote: This property shall be developed in accordance with the approved final development plan.~~
- 7-8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. ~~Correct plan title to read: "Amended Final Record Plat."~~
10. ~~Addition of name and address of property owner and developer.~~
11. ~~Clarify that Lot 9 is not a part of this plat (with dashed lines).~~
12. ~~Remove building information on adjacent property.~~
13. ~~Label lots in numerical order (consistent with plan notes).~~
14. ~~Addition of purpose of amendment note.~~
15. ~~Addition of notes from previous plat.~~
16. ~~Addition of street cross sections from previous plat.~~
17. ~~Addition of site statistics such as zoning, acres, number of lots, etc.~~
18. ~~Remove "zoning requirement" note.~~
- 8-19. Discuss/Resolve building wall conflicts with proposed property lines prior to plan certification.

With regard to condition #7, Ms. Gallt stated that, although this plan was previously approved, documentation of the ability to meet the requirements of the Capacity Assurance Program is required, since the property is now proposed to be subdivided. She stated that Mr. Saltee would describe the 8th condition recommended by the staff.

Mr. Saltee directed the Commission's attention to a rendering of a minor amended development plan recently submitted to the staff for this location, noting that it was being used to help explain the plat that was currently before them, although the minor development plan was not being presented for action at this time. He said that the existing development plan for the property has a single building approved close to the frontage of Mapleleaf Drive. This minor amendment, which the staff has been reviewing since the Subdivision Committee meeting three weeks ago, would change the height, geometry, and ground coverage of three of the proposed buildings, and would add a fourth building near that street.

Mr. Saltee stated that the submitted plat does not match the current, certified and approved development plan for the subject property, which was the basis for the applicant's submission of this revision. He said that, in the staff's view, the amendment does not yet meet all of the requirements of a minor amended plan, but its submittal is enough of an assurance to the staff that the applicant intends to resolve the conflicts between the proposed lotting and the approved buildings on the property. The staff, therefore, is now recommending approval of this plat, and recommending the addition of revised condition #8, as listed.

Mr. Saltee explained that there are two ways to resolve the existing conflicts on the plat: the approved plat could be revised to match the existing development plan; or the minor amendment could be further revised and certified to eliminate the conflicts in that manner.

Commission Question: Mr. Penn asked Mr. Saltee to explain the conflicts with the property lines. Mr. Saltee answered that the conflict was first identified with the existing development plan, where there are two property lines that conflict with the approved building locations. Those conflicts are easily resolved with the minor amended plan, but the staff is now concerned about the area closest to Mapleleaf Drive, which is why the plan has not been certified. Mr. Penn asked if the building in question is proposed to be too large, so that it conflicts with the property line. Mr. Saltee responded that the staff believes that there are two problems with the minor amendment: it appears to occupy more ground area and to have more floor area than the current plan. Neither of those changes are eligible to be approved by the staff, so the petitioner must either file a major amended development plan, or revise this plan in order to maintain its minor plan status.

Petitioner Representation: Nick Nicholson, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, and he noted that the petitioner intends to change the calculations in order to maintain the plan's status as a minor amendment.

Citizen Comment: There were no citizens present to comment on this proposal.

Action: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 7-0 (Beatty, Brewer, Owens, and Plumlee absent) to approve PLAN 2013-110F, with the eight conditions as listed.

* - Denotes date by which Commission must either approve or disapprove request.

2. DEVELOPMENT PLAN

- a. DP 2013-80: ELLERSLIE PLACE, LOTS 2 & 2A (MIDLAND CROSSING) (AMD) (11/26/13)* - located at 222 Midland Avenue and 225 Walton Avenue. (Council District 3) **(Milestone Design Group, Inc.)**

Note: The Planning Commission postponed this plan at their September 12, 2013, and October 10, 2013, meetings. The purpose of this amendment is to revise the site for proposed apartments on Lot 2 and the combination of apartments versus commercial on Lot 2A.

The Subdivision Committee Recommended: **Postponement.** There were questions regarding the notification of the nearby neighborhood associations and compliance with Article 28-6 of the Zoning Ordinance.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Correct plan title to read "Ellerslie Place, Lots 2 & 2A (Midland Crossing) (AMD)".
10. Addition of record plat designation.
11. Denote cross-sections for new street/access easements.
12. Dimension proposed townhouse buildings.
13. Denote width of parking spaces.
14. Denote number of bedrooms per unit.
15. Revise note #14.
16. Correct garage parking in site statistics (56 vs. 65).
17. Review by Technical Committee prior to plan certification.
18. Discuss proposed building on Lot 2A conflict with 15' and 25' easements.
19. Discuss status of preliminary subdivision plan and required information under the Land Subdivision Regulations.
20. Discuss compliance with Art. 28-6 provisions.
21. Discuss whether access easements/streets are to be public or private.
22. Discuss timing of new mixed-use building versus new townhouse development.

Staff Presentation: Mr. Martin presented this amended development plan, briefly orienting the Commission to the location of the property between Midland Avenue and Walton Avenue, near the intersection of Midland and Winchester Road. He noted that there is a railroad spur near the subject property, which is used to deliver newsprint to the nearby *Lexington Herald-Leader* building.

Mr. Martin stated that the previously approved development plan for the subject property, which is zoned for mixed use, included several multi-family buildings. Referring to a rendered development plan, he noted the location of several proposed structures: a building that is proposed to be used primarily for professional offices; the nearby access point; and a mixed-use building that was shifted slightly on this version of the plan. The current version of the plan is dominated by 46 proposed two-bedroom, multi-story townhouse units. A 62,000 square-foot commercial building is also proposed, with associated parking, and 28 one-bedroom dwelling units. Mr. Martin said that parking spaces are distributed throughout the development, with 57 garage spaces and 45 surface spaces proposed to serve the townhouse units. He noted that the property has been subdivided into two lots, and parking is proposed to be shared between the two lots. There are existing sanitary sewer and utility easements on the property, and the petitioner is proposing to add a detention basin.

Mr. Martin said that the staff has met with the petitioner several times since this plan was originally postponed, and the petitioner has submitted several revisions to the plan. The staff is now recommending approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.

* - Denotes date by which Commission must either approve or disapprove request.

7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program, prior to plan certification.
9. Correct plan title to read "Ellerslie Place, Lots 2 & 2A (Midland Crossing) (AMD)" Denote significant tree information and tree protection areas along property line, per Art. 26 of the Zoning Ordinance.
10. Addition of record plat designation.
11. Denote that new street/access easements will be private and privately maintained, and add required certification (per the Land Subdivision Regulations).
12. ~~Dimension proposed townhouse buildings Delete note #20.~~
13. Denote width of parking spaces Complete pedestrian system (sidewalk) for entrances to all Units to the approval of the Pedestrian Planner and Division of Traffic Engineering.
14. ~~Denote number of bedrooms per unit.~~
14. 15. Revise note #14 Denote Division(s) of Fire and Traffic Engineering approval of proposed gate.
15. 16. Correct garage timing of landscape islands in parking area on Lot 2A per previously approved plans, and document compliance with Article 18 interior landscaping requirements in site statistics (56 vs. 65).
17. ~~Review by Technical Committee prior to plan certification.~~
18. ~~Discuss proposed building on Lot 2A conflict with 15' and 25' easements.~~
19. ~~Discuss status of preliminary subdivision plan and required information under the Land Subdivision Regulations.~~
16. 20. Discuss Demonstrate compliance with Art. 28-6 provisions prior to plan certification.
17. 21. Discuss whether Revise townhouse parking areas proposed along access easements/streets are to be public or private to eliminate pedestrian conflicts.
18. 22. Discuss timing of new mixed-use building versus new townhouse development Denote: No building permits shall be issued for Units 36-46 until the mixed-use building on Lot 2A has been constructed.

Mr. Martin stated that the first eight conditions refer to standard development plan sign-offs. With regard to condition #9, he said that the area of the property where the significant trees are located already has conditional zoning restrictions, which were imposed in order to buffer the Bell Court neighborhood from the subject property. After being made aware that there was an existing bur oak tree on the property, the petitioner met in the field with the Urban Forester and representatives of the Bell Court Neighborhood Association. The petitioner has since revised the plan to relocate some open space, and provide additional protection for that significant tree. The staff is requesting that the petitioner identify that Tree Protection Area on the plan, as required by Article 26 of the Zoning Ordinance.

Mr. Martin explained that this is a preliminary subdivision plan, as well as a final development plan, so it will enable the petitioner to subdivide the property. Conditions #10 and #11 are recommended to address those issues. He added that the petitioner has agreed to construct the proposed private access easements, which will provide the frontage for the townhouse units, to public street standards. The staff is recommending condition #14 because of the petitioner's proposal to construct a gate to restrict cut-through traffic on the property. The Division of Traffic Engineering expressed some concern about the ability of drivers to turn around and exit the property if they enter under the belief that they can cut between Midland Avenue and Walton Avenue. Mr. Martin said that condition #15 relates to the previously approved plan for the property. There are landscape islands depicted on that plan that do not currently exist, and the staff would like for the petitioner to indicate where they intend to provide those islands. With regard to condition #16, he said that Article 28-6 pertains to the design guidelines and criteria of the mixed-use zones. The petitioner will need to demonstrate their compliance with Article 28-6 on this plan. In addition, the petitioner has provided an exhibit with a rendering of the proposed townhouse units, demonstrating how they intend to meet the facade requirements.

Mr. Martin stated that conditions # 13 and #17 are related; they pertain to the sidewalk system that was depicted on the previous plan for the property, but was not included on this plan. The staff is recommending that the petitioner add that sidewalk system back to the plan, as they believe that it is very important to maintain connectivity to the public sidewalk system that adjoins the property. The plan does depict a path through the property, which the staff believes would provide a nice feature for the residents, but they do not believe that it is sufficient as a connection for the public sidewalk system in the area. The petitioner will also need to adjust the parking areas slightly to resolve some conflicts with the pedestrian system. With regard to condition #18, Mr. Martin stated that the staff is recommending this condition because the presence of at least one mixed-use building is inherent to the requirements of the mixed use zone. The staff believes that meeting the requirements of the mixed-use zone is important enough to link it to the timing of the construction of the proposed development. The petitioner has also indicated that they intend to file an easement minor plan to eliminate some additional conflicts on the plan.

Mr. Martin stated that this plan includes a series of notes that are listed under the conditional zoning requirements, although they are not part of those requirements. They are the result of conversations between the petitioner and representatives of the Bell Court neighborhood, in which the staff has not participated. Prior to the start of this meeting, the staff distributed to the Commission members a letter of support from a representative of the neighborhood, which referenced the conditions that are included on the plan. Mr. Martin explained that the staff received that letter immediately prior to the meeting, so they had not had the opportunity to review the proposed conditions.

* - Denotes date by which Commission must either approve or disapprove request.

Commission Questions: Mr. Berkley asked, with regard to condition #18, if it was typical to “force” one of the components of a mixed-use project to be constructed first as a condition on a development plan. He said that there are several examples in the Community Center (CC) zones where the residential component was never constructed, and asked why the staff believes it is appropriate to tie the issuance of building permits to the construction of the mixed-use building. Mr. Martin responded that the MU zone requires a mixed-use building. He said that, without a mixed-use building, another zoning category might be more appropriate for the property. If that is the case, the staff would recommend that the petitioner pursue a zone change for the property. Mr. Martin added that the Red Mile mixed-use project also had timing components related to square footages and the residential uses. Mr. Berkley stated that he considered the CC zone to be mixed use as well. Mr. Martin responded that the CC zone typically has a mixture of uses, but it has different requirements; the MU zones are much more urban in character. Mr. Berkley stated that, in real estate development, properties are typically developed as there is demand. He said that he does not agree completely with requiring the petitioner to develop the property when demand for those uses does not exist, particularly since an empty building in the middle of the development could have a negative effect on the entire project. Mr. Martin reiterated that, if a mixed-use building cannot work on the property, the petitioner should consider pursuing a zone change.

Ms. Mundy asked if the staff was recommending that the petitioner construct a sidewalk on both sides of the street. Mr. Martin answered that the staff was recommending the sidewalk for only one side of the new street.

Mr. Penn asked Mr. Martin to indicate where the proposed gate would be located relative to the existing railroad track on the property. Using the rendered development plan, Mr. Martin noted the location of the track. Mr. Penn asked if the staff had a preference with regard to the installation of the gate. Mr. Martin answered that the staff did not have a preference for whether the gate is installed or not, but it seemed that the petitioner was concerned about cut-through traffic on the property.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He said that the petitioner had met several times with the staff to respond to their concerns. The subject property has a history of attempts at development, dating back to the mid-1980s, under several different owners. The petitioner believes that adding residential units in the downtown area will be a benefit for the community. Mr. Simpson stated that the petitioner has also met with residents of the Bell Court neighborhood many times over the years, and the proposed notes on the development plan reflect the petitioner's desire to make the agreed-upon conditions enforceable. He said that there were two residents of the Bell Court neighborhood present at this meeting, who were prepared to offer their support for this project.

Mr. Simpson stated that the petitioner is in agreement with the staff's recommendations, and that they were aware that there is additional work to be done on the plan. He thanked the staff for their willingness to work with the petitioner, and he requested approval.

Commission Questions: Mr. Penn asked, with regard to Mr. Berkley's question, if the petitioner intended to pursue a zone change at some point in the future if the mixed-use concept does not prove to be marketable. Mr. Simpson answered that, for now, the petitioner intends to keep the mixed-use zoning for the property, which is why they were willing to agree to delaying construction of the residential units in order to meet the requirements of the mixed-use zone. He added that, if the petitioner believes that there is no market for the mixed-use building, then there would be no point in constructing the building, only to have it remain empty. Should that happen, the petitioner could pursue a zone change for the balance of the property.

Mr. Penn asked if the townhouses were proposed to be owned, or rented. Mr. Simpson answered that there would be no preclusions on renting the townhouses, but they will be designed to be sold.

Citizen Comments: Bobby Clark, Bell Court neighborhood resident, was present representing the Bell Court Neighborhood Association. He said that his property directly adjoins the subject property, and he has been facilitating the discussions between the petitioner and the neighborhood residents for some time. Mr. Clark opined that the petitioner has been very cooperative in considering the needs of the Bell Court residents, who did not support the five-story multi-family building that was previously proposed to be constructed on the subject property. He and his neighbors believe that the current plan represents a reasonable compromise for all parties, but they are concerned about maintaining the vegetative buffer along the common property line, and about preserving the bur oak. The petitioner has assured them that their concerns will be taken into consideration. Mr. Clark stated that the property owners had submitted a letter in support of this request. He added, however, that they are now concerned about the possibility of a future zone change on the property, but they appreciate the petitioner's willingness to compromise.

Commission Questions: Mr. Penn asked if the Bell Court residents have any concerns about the proposed gate on the subject property. Mr. Clark answered that the neighborhood residents are in support of the construction of at least one gate on the property, in order to eliminate cut-through traffic to Walton Avenue and Boonesboro Avenue. Mr. Penn asked Mr. Simpson to respond to Mr. Clark's comments. Mr. Simpson stated that the gate was proposed to

* - Denotes date by which Commission must either approve or disapprove request.

address the needs of the future residents of the subject property, which will have a private driveway area. He said that it would be difficult to assess those residents a maintenance fee for the access easement and require them to pay for its upkeep if it was being used as a cut-through by the general public.

Mr. Berkley asked if any of the Commission members had an opinion about condition #18. Mr. Wilson answered that, if the petitioner is willing to agree to it, he could accept it. However, the petitioner had issued a warning that they could pursue a zone change at some point in the future if the mixed-use concept did not prove to be marketable.

Mr. Penn asked if the conditions agreed upon by the petitioner and the Bell Court neighborhood would be included on the development plan, to be considered as part of the Commission's recommendation. Mr. Martin answered that the petitioner is requesting that those conditions be considered as part of the development plan notes, so that they can be enforced. Mr. Penn asked if any motion would need to include the addition of those conditions, to which Mr. Martin answered affirmatively. Mr. Sallee stated that the staff had not had the opportunity to review the agreed-upon conditions in advance. Upon review, the staff might advise that only some of the conditions should be included on the development plan. He added that private restrictions are not typically enforceable by the government, but such an agreement could certainly be referenced on the development plan.

Mr. Penn asked how the Commission should address the proposed conditions. Mr. Sallee answered that, in concept, the staff is in agreement, but they could not guarantee that the exact language of these conditions would be included on the development plan, in order to ensure that the restrictions are enforceable.

Citizen Comment: Mr. Clark stated that the neighbors would be agreeable to editing changes to the proposed conditions, but their letter of support was conditional upon the expectation that the notes would be included on the development plan. He said that, if there were substantive changes, they might need to consider withdrawing their support.

Mr. Sallee stated that the staff would not have a problem with referencing a private agreement on the plan, but they would not want to commit to LFUCG's enforcement of conditions that were not enforceable as development plan notes. Mr. Cravens asked if having the letter of support on record would be sufficient to address the neighborhood's concerns. Mr. Sallee stated that the staff's only issue was one of private enforcement versus LFUCG enforcement of the conditions.

Jim Griggs, Bell Court neighborhood property owner, asked Mr. Sallee to explain which of the proposed development plan notes had caused the staff's concerns. Mr. Sallee responded that the staff had not seen the proposed notes prior to the start of this meeting. He said that, if the Commission would like to take a brief recess, the staff could quickly review the notes.

Note: Mr. Cravens declared a brief recess at 2:16 p.m. The meeting reconvened at 2:22 p.m.

Director Comments: Mr. King stated that, if the intent of the proposed conditions was for them to be enforced by the Division of Building Inspection, there would need to be some modification and clarification. He said that the first item read:

"To build fences on your property behind 597, 601, 603, 605, and 607, with specifications noted in the development plan."

Mr. King stated that it would be no problem to indicate on the plan that fencing would be constructed behind those properties, but it would need to be tied to an event such as the issuance of building permits. He noted that, if no specifications are laid out, the property owners could choose the type and height of fence and LFUCG agencies would have no reason to dispute that that type of fence would be acceptable. The petitioner would need to submit the specifications for the fencing in order for LFUCG staff to make a determination as to whether the fences are in compliance with the applicable Ordinances.

Mr. King read the second proposed condition:

"Plan to incrementally clear brush every 150' to 200' as the townhouses are built."

Mr. King stated that that language has a judgmental character, and it would also need to be tied to the issuance of building permits. In addition, the location of the brush to be removed would need to be indicated on the plan. Mr. King added that there is a "built-in potential for conflict" in that condition, as people's opinions can vary with regard to brush and trees.

Mr. King said that proposed condition #3 reads:

* - Denotes date by which Commission must either approve or disapprove request.

"Speak to each Boonesboro Avenue property owner in advance regarding the removal of any mature trees, after an arborist's inspection."

He noted that, again, no local government permit is required for the removal of a tree, so he was unsure how this condition would be precipitated in terms of government enforcement. He read condition #4:

"Fix past standing water and draining problems during heavy rain events behind 527, 529, and 531 Boonesboro Avenue properties."

Mr. King stated that this condition would also need to be tied to a precipitating event. In addition, it would need to be decided to whose approval and satisfaction the problem would be remedied. He suggested that the condition could state that the problems would be fixed to the satisfaction of the Urban County Engineer prior to the issuance of any permits; but, it would need to be determined what would constitute "fixing" of the past standing water problems. He read the final proposed condition:

"Providing opportunities for property owners to review and comment on engineering and landscaping issues."

Mr. King stated that Engineering approval for any improvement plans for the property is an administrative function of the Division of Engineering, not a hearing function. Likewise, approval of landscaping as required under the Ordinance is an administrative function of the Division of Building Inspection as part of the permit process. He said that it would be possible to require that the developer provide written notice to property owners at the time that anything is submitted to the Urban County Government, but those property owners would need to be specified.

Mr. King stated that he was respectful of the neighborhood's concerns, but the conditions as read would need a great deal of clarification in order to be included as typical development plan conditions.

Commission Questions: Mr. Cravens asked Mr. King to clarify that he intended to indicate that the conditions as read should not be included as formal conditions on the development plan, but referred to on the plan as a separate agreement. He noted that that separate agreement would be part of the record of this meeting. Mr. King stated that there could be a separate agreement, or the petitioner and the neighborhood could work to modify the proposed conditions to be acceptable to the Urban County Government. He said that the staff would be glad to work with both sides toward a resolution. Mr. Cravens asked, since this is a final development plan, if the petitioner would have two weeks to resolve the issues. Mr. King answered that, if the Commission gave the plan conditional approval, the petitioner would have a year to resolve the issues. He said that if an impasse was reached during those discussions, the issue would come back before the Planning Commission for final adjudication.

Mr. Clark stated that most of the conditions Mr. King read were included in the letter submitted to the Commission, but were not part of the proposed development plan notes. He said that, if the staff wanted to review and present language that was acceptable to them, the neighborhood would only want the opportunity to work out the details of the private agreement with the petitioner.

Petitioner Comments: Mr. Simpson stated that he had not seen the letter to which Mr. King and Mr. Clark referred prior to this meeting, but the proposed notes have been on the development plan for the past few days. He noted that the conditions listed in the letter were not reflected in the plan notes, which created the confusion. Mr. Simpson said that, if the staff had any concerns with the notes as they are listed on the plan, the petitioner would work with them to resolve the issues, and any unenforceable conditions could be deleted.

Mr. King stated that the staff would fully support the neighborhood and the petitioner in working out a private agreement, and they would have no objection to reviewing the enforceable notes on certain aspects of the development plan.

Commission Questions: Mr. Penn asked if this issue created a need for a postponement of this item. Mr. King answered that it seemed that both sides were agreeable, and the staff was willing to go forward at this point if the Commission was comfortable with letting the staff and the petitioner work together to resolve this issue. He added that, if a substantial disagreement came up, the plan would be brought back before the Commission as a continued discussion item. Mr. Simpson stated that the petitioner does not wish to postpone this item, and that the issues could be resolved without a postponement.

Neighborhood Comment: Mr. Griggs stated that the neighbors' primary concern is the need for a continuous fence along their boundaries with the subject property. Mr. Clark conducted a poll, and found that there were 12 properties with an existing stockade fence, and five properties with chain link fencing or no fence. Mr. Griggs said that, in a meeting with the developer, it was agreed that he would erect an 8' privacy fence across the boundary with those five lots. That agreement was the basis for the letter of support that was endorsed by all 17 property owners. Mr.

* - Denotes date by which Commission must either approve or disapprove request.

Griggs stated that he and Mr. Clark had promised their neighbors that that fence would be a development plan requirement, and he believed that it should be simple to specify and enforce on the plan.

Mr. King stated that, as long as those specifications were on the development plan, there should be no further issues with that condition. Mr. Cravens asked Mr. Martin to verify that the fence specifications were included on the plan. Mr. Martin reviewed the plan, and noted that it specifies an "8' foot tall privacy fence made from pine or other comparable material." In addition, another note addresses the replacement of any damaged fencing.

Commission Question: Mr. Wilson asked if all of the elements listed in the neighborhood support letter were included in the development plan notes, or whether they should be included. The Chair responded that some of those items were not enforceable by LFUCG; and those could not be included in the plan notes, but rather considered as part of a private agreement between the developer and the property owners. Mr. Cravens added that the letter will be part of the record of this meeting.

Action: A motion was made by Mr. Berkley, seconded by Mr. Wilson, and carried 7-0 (Beatty, Brewer, Owens, and Plumlee absent) to approve DP 2013-80, subject to the 18 conditions as listed in the revised staff recommendation.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, October 3, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Mike Cravens, David Drake, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. FULL PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

1. **ZOTA 2013-9: FLEX SPACE PROJECTS IN THE WHOLESALE AND WAREHOUSE BUSINESS (B-4) AND LIGHT INDUSTRIAL (I-1) ZONES** – petition for a Zoning Ordinance text amendment to create a "flex space project" in the Wholesale and Warehouse Business (B-4) and Light Industrial (I-1) zones.

REQUESTED BY: The Howser Group, LLC

PROPOSED TEXT: (Note: Underlined text indicates an addition to the current Zoning Ordinance.)

ARTICLE 8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21(b) Principal Uses

...

- 21. Office uses, limited to a maximum square footage of 60% of the floor area in the building in which the use is located.
- 22. Office/warehouse mixed-use project, as further regulated by Article 8-21(o)(3).
- 23. Adaptive Reuse Projects, as further regulated in 8-21(o)4.

...

- 26. Flex Space Project. Flex space projects may be permitted by the Planning Commission upon the approval of a final development plan, subject to the following requirements:
 - a. The property must be the site of an existing building with substantial lot coverage which does not allow substantial expansion of the building or parking facilities.
 - b. The existing building must remain on the property.
 - c. Principal uses in flex space projects shall include:
 - 1. Any of the principal uses permitted in the underlying zone.
 - 2. Schools; libraries; museums; art galleries; studios for work or teaching of fine arts, metal work, photography, dance, drama or theater.
 - 3. Community centers, churches and private clubs.

* - Denotes date by which Commission must either approve or disapprove request.

4. Establishments for the retail sale of merchandise, food and food products.
5. Restaurants.
6. Offices.
7. Health clubs, athletic clubs and spas.
- d. Accessory uses that are clearly incidental and subordinate to the principal uses.
- e. Conditional uses:
 1. Drive-through facilities.
- f. Prohibited uses:
 1. All adult uses, as listed in Section 8-16 (e)(14 through 17).
- g. Parking.
 1. Restaurants. As set forth in the B-1 zone.
 2. All other uses, one space per 600 square feet.
- h. Signage, lot, yard and height requirements shall be as set forth in the underlying zone.
- i. The applicant shall submit a statement with the development plan that shall address the compatibility of the flex space project with the surrounding area. This statement may address the following:
 1. Whether restaurant uses, which require a higher number of parking spaces, will be allowed in the project.
 2. Whether the project is located on a major arterial; and if it is, whether additional parking needs to be provided to accommodate "impulse" customers.
 3. Whether the project is located in an area of mixed uses and zones.
 4. Whether the area has historically had a mixture of retail and wholesaling types of uses.
 5. Whether the project is located in a block front which contains residential zoning.

The Zoning Committee Recommended: **Approval.**

The Staff Recommends: **Postponement**, for the following reasons:

1. The proposed text amendment to create a "flex space project" in the B-4 and I-1 zones may be addressing a community need; however, more edits are needed to take this proposal into a final form that the staff can support.
2. The staff would like to research other alternatives to the approach suggested by the petitioner to meet the same outcome – more flexibility in the B-4 zone.

Staff Presentation: Ms. Wade presented the staff report for this proposed text amendment, explaining that the petitioner is proposing to create a new principal use, called a "flex space project," in the B-4 zone, which would carry forward to the I-1 and I-2 zones as well.

Ms. Wade stated that the petitioner is proposing this text amendment in order to create additional flexibility in the B-4, I-1, and I-2 zones, with the stated purpose of assisting in growing small businesses without adversely affecting surrounding areas. The proposed text would require the filing of a development plan with a flex space project, which would be reviewed by the Planning Commission. In addition, the proposed text would allow schools; libraries; museums; art galleries; churches and private clubs; establishments for retail sale of merchandise and food; restaurants; offices; and athletic clubs; and similar uses. The petitioner is also proposing some additional criteria for the Planning Commission to consider in evaluating requests for flex space projects.

Ms. Wade said that, in their justification, the petitioner identified some areas within Lexington-Fayette County that are zoned B-4 or I-1 and that they believe are underperforming in terms of job creation. They believe that providing additional zoning flexibility would allow for the creation of business incubation areas. The petitioner currently owns property in the Regency Road/Moore Drive area, which has a mixture of several different zoning categories and land uses. Ms. Wade stated that that area includes businesses that are involved in warehousing, processing, storage and distribution, and retail sales. The petitioner believes that the percentage of space used for a particular function shifts over the lifetime of a business; often, a business begins with only wholesale operations, then branches out to retail sales. The Zoning Ordinance, however, sometimes does not allow those types of shifts. The petitioner contends that, as those businesses mature, they are often forced to choose between conforming with the requirements of the Zoning Ordinance, and moving to another location or closing because they are unable to expand. Ms. Wade stated that the staff also identified the Fortune Drive and Creative Drive areas, which have a similar mixture of uses, including warehouses in close proximity to retail uses.

Ms. Wade noted that the staff had distributed an exhibit, which outlined some of the other means by which to achieve a mix of uses on a property in the B-4 zone. She said that, in the past, office uses have been permitted to be mixed with warehouse uses, in some cases occupying up to 75% of the space. In addition, retail sales are permitted as accessory to some uses in these zones for some types of sales. For the sales of certain products, such as lumber and furniture, retail sale is allowed as a principal use.

Ms. Wade stated that the 2012 Comprehensive Plan Goals & Objectives, Theme C, refers to creating jobs and prosperity. The petitioner cited that Theme as one of the primary reasons for the appropriateness of the proposed text amendment. They also believe that the proposed text amendment will help to support and encourage the growth of local businesses, which is identified as a Goal in the 2012 Goals & Objectives.

* - Denotes date by which Commission must either approve or disapprove request.

Ms. Wade said that the staff initially had some concerns about the petitioner's proposed text, and they recommended postponement to the Zoning Committee based on those issues. The Zoning Committee understood that the staff was in support of the concept, but had issues with the proposed text; so they recommended approval of this text amendment at their meeting three weeks ago, with the understanding that the staff and the petitioner intended to meet and resolve those concerns. The staff met with the petitioner, who addressed some of their concerns, particularly with regard to the more technical issues involved in the proposed text amendment. The staff conducted some additional research into the subject, and determined that the petitioner's proposal is equally as good as some of the other approaches that could address the flex space issue.

Ms. Wade stated that the following revised text, submitted by the petitioner, was included in the supplemental staff report, which was distributed to the Commission members:

ARTICLE 8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21(b) Principal Uses

- ...
- 21. Office uses, limited to a maximum square footage of 60% of the floor area in the building in which the use is located.
- 22. Office/warehouse mixed-use project, as further regulated by Article 8-21(o)(3).
- 23. Adaptive Reuse Projects, as further regulated in 8-21(o)4.
- ...
- 26. Flex Space Project, as further regulated in Section 8-21(o)5.

8-21(o) Special Provisions:

- ...
- 5. Flex space projects may be permitted by the Planning Commission upon the approval of a final development plan, subject to the following requirements:
 - a. The property must be the site of an existing building with substantial lot coverage which does not allow substantial expansion of the building or parking facilities.
 - b. The existing building must remain on the property.
 - c. Principal uses in flex space projects shall include:
 - 1. Any of the principal uses permitted in the underlying zone.
 - 2. Schools; libraries; museums; art galleries; studios for work or teaching of fine arts, metal work, photography, dance, drama or theater.
 - 3. Churches and private clubs.
 - 4. Establishments for the retail sale of merchandise, food and food products.
 - 5. Restaurants, if under 4,000 square feet in area.
 - 6. Offices.
 - 7. Health clubs, athletic clubs and spas.
 - d. Accessory uses that are clearly incidental and subordinate to the principal uses.
 - e. Conditional uses:
 - 1. Drive-through facilities.
 - f. Prohibited uses:
 - 1. All adult uses, as listed in Section 8-16(e)(14 through 17).
 - g. Parking.
 - 1. Restaurants. As set forth in the B-1 zone.
 - 2. All other uses, one space per 600 square feet.
 - h. Signage, lot, yard and height requirements shall be as set forth in the underlying zone.
 - i. The applicant shall submit a statement with the development plan that shall address the following locational and compatibility factors, as well as other issues the applicant may wish to address:
 - 1. A Flex Space Project shall generally not be located on a major arterial. (If the Project is located on a major arterial, the applicant shall address whether additional parking needs to be provided to accommodate "impulse" customers).
 - 2. The Project shall generally be located in an area of mixed uses and zones.
 - 3. The Project shall generally be located in an area which has historically had a mixture of retail and wholesaling types of uses.
 - 4. The Project shall generally be located in a B-4 or I-1 area in which, due to small lot size, adjacent uses, or condition or status of roads, it would not be appropriate to construct larger B-4 or I-1 uses, such as truck terminals, manufacturing facilities or large warehousing facilities.
 - 5. The project shall generally not be located in a block front which contains residential zoning.
 - 6. If the Project is proposed to include restaurant uses, the applicant shall demonstrate that any additional parking needed for restaurant uses is available and accessible.

* - Denotes date by which Commission must either approve or disapprove request.

Ms. Wade stated that the staff did not agree with the petitioner's assertion that it is necessary to maintain the building on a lot for a flex space project. The staff did believe, however, that it is important that flex space projects be permitted only outside of the defined Infill & Redevelopment (I/R) Area, so that they will not compete with adaptive reuse projects, which must be located inside the I/R Area. The flex space project would be similar to the adaptive reuse project concept, except they would allow fewer uses, and would require fewer necessary criteria and improvements to the property. Ms. Wade said that the staff was also suggesting adding a phrase to the intent of the zone regarding flexible use of sites outside the I/R Area, and limiting establishments for retail sale of merchandise, food, and other food products to 8,000 square feet. The petitioner has agreed to restrict restaurants to just 4,000 square feet, and the staff believed that a similar restriction was important to prevent the use of a flex space property from becoming just a retail establishment. Ms. Wade stated that the staff is recommending approval of the following staff alternative text:

Staff Alternative Text

ARTICLE 8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21(a) Intent – This zone is intended primarily for wholesaling, warehousing, storage operations and establishments whose activity is of the same general character as the above. To a lesser extent, this zone is also intended to provide for the mixture of professional offices and warehouses that promote reuse and redevelopment of older warehouses, allowing businesses to combine their entire operation in one building, as recommended for the Office/Warehouse land use category in the Comprehensive Plan. This zone is also intended to encourage the adaptive reuse of older structures in or adjoining the Infill and Redevelopment Area to promote revitalization of these buildings, **and the flexible use of sites outside of the Infill and Redevelopment Area.** The Comprehensive Plan should be used to determine the appropriate locations for this zone. Consideration should be given to the relationship of this zone to the surrounding land uses and the adequacy of the street system to serve the anticipated traffic needs.

8-21(b) Principal Uses

...

21. Office uses, limited to a maximum square footage of 60% of the floor area in the building in which the use is located.

22. Office/warehouse mixed-use project, as further regulated by Article 8-21(o)(3).

23. Adaptive Reuse Projects, as further regulated in 8-21(o)4.

...

26. Flex Space Project, as further regulated in ~~Section~~ 8-21(o)5.

8-21(o) Special Provisions:

...

5. Flex space projects may be permitted by the Planning Commission upon the approval of a final development plan, subject to the following requirements:

~~a. The property must be the site of an existing building with substantial lot coverage which does not allow substantial expansion of the building or parking facilities.~~

a. The existing building site must be located outside of the defined Infill and Redevelopment Area remain on the property.

b. Principal uses in flex space projects shall include:

1. Any of the principal uses permitted in the underlying zone.

2. Schools; libraries; museums; art galleries; studios for work or teaching of fine arts, metal work, photography, dance, drama or theater.

3. Churches and private clubs.

4. Establishments for the retail sale of merchandise, food and food products, **if under 8,000 square feet in area.**

5. Restaurants, if under 4,000 square feet in area.

6. Offices.

7. Health clubs, athletic clubs and spas.

c. Accessory uses that are clearly incidental and subordinate to the principal uses.

d. Conditional uses:

1. Drive-through facilities.

e. Prohibited uses:

1. All adult uses, as listed in Section 8-16(e)(14 through 17).

f. Parking.

1. Restaurants. As set forth in the B-1 zone.

2. All other uses, one space per 600 square feet.

g. Signage, lot, yard and height requirements shall be as set forth in the underlying zone.

h. The applicant Planning Commission shall, with the approval of any submit a statement with the development plan, consider that shall address the following locational and compatibility factors, as well as other issues the applicant may wish to address:

* - Denotes date by which Commission must either approve or disapprove request.

1. A Flex Space Project shall generally not be located on a major arterial. (If the Project is located on a major arterial, the applicant shall address whether additional parking needs to be provided to accommodate "impulse" customers).
2. The Project shall generally be located in an area of mixed uses and zones.
3. The Project shall generally be located in an area ~~which~~ **that** has historically had a mixture of retail and wholesaling ~~types of land~~ uses.
4. The Project shall generally be located in a B-4 or I-1 area in which, due to small lot size, adjacent uses, or ~~condition or status of roads~~ **the nature of the roadway system**, it would not be appropriate to construct larger B-4 or I-1 uses, such as truck terminals, manufacturing facilities or large warehousing facilities.
5. **The property is the site of an existing building with substantial lot coverage that does not allow substantial expansion of the building or parking facilities.**
6. The project shall generally not be located in a block front ~~which~~ **that** contains residential zoning.
6. ~~If the Project is proposed to include restaurant uses, the applicant shall demonstrate that any additional parking needed for restaurant uses is available and accessible.~~

The Staff Recommends: **Approval of the Staff Alternative Text**, for the following reason:

1. The proposed text amendment to create a "flex space project" in the B-4 and I-1 zones addresses a community need to promote more of a mixture of business uses in some appropriate locations outside of the defined Infill and Redevelopment Area.

Commission Question: Mr. Penn asked if the proposed text amendment would be applicable to all of the B-4 areas, except for those located in the I/R Area, to which Ms. Wade answered affirmatively. Mr. Penn asked if that would, in essence, create a new B-4 or I-1 zone. Ms. Wade responded that it would allow more flexibility in those areas. She said that the staff believes that the petitioner's proposed criteria would help the Planning Commission in deciding if a flex space project is appropriate for a particular property. The petitioner is suggesting that flex space projects be generally located in an area of mixed uses and zones, which would eliminate many of the existing B-4 areas.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner appreciated the staff's willingness to work with them since the Zoning Committee meeting three weeks ago.

Mr. Murphy stated that the petitioner owns a building on Moore Drive, which is zoned B-4. He said that Moore Drive is an amalgam of B-3, B-4, and I-1 zoning, all located in close proximity to one another; the building directly adjoining the subject property is split by the B-3/B-4 zone line. The subject property is currently occupied by the J & H Lan-Mark store; Porter Paint store; and Re-Kid, which is a pre-owned children's clothing store with warehouse use. The building has been occupied in the past by several different retail uses, a physical therapy office, and a radio station, all in the B-4 zone. Mr. Murphy stated that many of the retail establishments in the Moore Drive area are "destination stores," where customers shop for specific items, rather than stores where shoppers browse for recreation.

Mr. Murphy said that the businesses located on the petitioner's property have been constrained by the limitations on retail sales in the B-4 zone, and the parking restrictions in that zone. The petitioner has owned the subject property for 35 years, and has never received a complaint due to parking issues. With regard to the retail limitations of the B-1 zone, the petitioner has in the past had to move walls on the interior of the building in order to meet the required percentages of wholesale, retail, and office use. Mr. Murphy stated that the petitioner contends that those types of constraints do not benefit start-up businesses, where the nature of the operation could change rapidly as it becomes successful. The J & H Lan-Mmark store started out with approximately 10,000 square feet of space, and expanded to add another store bay; its owners are currently considering another expansion. The store owners like their current space, and believe that the location is perfect for their business, which does not need arterial roadway exposure. Mr. Murphy said that the proposed text amendment will allow them to expand their operation at their current location.

Mr. Murphy stated that he has been working on the proposed text amendment for approximately a year, during which time he has met with Mr. King, Mr. Saltee, Ms. Wade, and Jim Duncan, manager of Long Range Planning. He said that, prior to his work on the proposed text amendment, the Moore Drive area had already been identified as a business incubator area. Mr. Murphy proposed a change to the Comprehensive Plan, but was informed by Mr. Duncan that those types of changes would not be incorporated into the 2012 Comprehensive Plan update. He therefore proposed this text amendment, which he modeled on the adaptive reuse section of the Zoning Ordinance. The petitioner's property would not qualify as an industrial mixed use project, because it lacked the required residential element, which would not be appropriate given the location of the property. The property also could not be considered as an adaptive reuse project, since the property is located outside the defined I/R Area. Mr. Murphy said that he added criteria requirements to the proposed text amendment so that the Planning Commission, in reviewing proposed flex space projects, could assess the appropriateness of restaurant uses.

Mr. Murphy stated that the petitioner's only objection to the proposed staff alternative text was the 8,000 square-foot limitation on retail sale areas. He said that he did not propose such a limitation in his draft because he believed that the location of flex space projects away from arterial roadways "would take care of itself." Mr. Murphy stated that the petitioner and the staff now

* - Denotes date by which Commission must either approve or disapprove request.

both agree that a limitation on retail sale areas of 20,000 square feet is acceptable. He asked that, should the Commission choose to adopt a limitation, they specify 20,000 square feet, rather than the 8,000 square feet proposed in the staff alternative text. With that change, Mr. Murphy said that the petitioner is in general agreement with the staff alternative text, and that both sides recognize the practicality of the proposed text amendment and the need to help local business grow.

Commission Questions: Mr. Penn asked if the proposed text amendment would create more commercial and retail uses in the I-1 zone. Mr. Murphy answered that flex space projects would be a principal use in the B-4 zone, and would carry over to the I-1 zone. He added that, in that regard, it would be similar to adaptive reuse projects, which also carry over to the I-1 zone. Mr. Murphy said that one of the proposed criteria for approval of a flex space project would be the location in an area where small lot size could preclude the construction of larger B-4 or I-1 uses, such as truck terminals, manufacturing facilities, or large warehouse facilities. That criterion was added to prevent industrial land from being "used up" by commercial uses. Mr. Penn stated that he was concerned about allowing too many retail uses in the I-1 zone as an unintended consequence.

Mr. Berkley stated that the square footage issue would need to be resolved. Mr. Cravens said that the Zoning Committee discussed that issue at their meeting three weeks ago. He opined that there are several areas that are "trapped" and businesses that are unable to expand because they do not have the appropriate percentages of retail and warehouse uses, and that the proposed text amendment would provide a good solution for that problem.

Mr. Penn asked if the staff was comfortable with Mr. Murphy's request to change the allowable retail uses from 8,000 square feet to 20,000 square feet. Ms. Wade replied in the affirmative.

Citizen Comments: There were no citizens present to comment on this request.

Action: A motion was made by Mr. Berkley, seconded by Mr. Drake, and carried 7-0 (Beatty, Brewer, Owens, and Plumlee absent) to approve the staff alternative text for ZOTA 2013-9, for the reasons provided by staff, changing 5.b.4. to read: "Establishments for the retail sale of merchandise, food and food products, if under 20,000 square feet in area."

VI. COMMISSION ITEMS

- A. ADOPTION OF MEETING & FILING SCHEDULE – Mr. Sallee stated that the staff presented the 2014 Meeting & Filing Scheduled to the Commission members at their work session one week ago. He apologized that the staff did not have copies available at this meeting, but noted that it was unchanged from last week's meeting.

Action: A motion was made by Mr. Penn, seconded by Ms. Blanton, and carried 7-0 (Beatty, Brewer, Owens, and Plumlee absent) to adopt the 2014 Meeting & Filing Schedule as presented by staff.

- B. REQUEST FOR CLOSED SESSION – Ms. Mundy moved, pursuant to KRS 61.8101(c), to go into closed session to discuss a matter of pending litigation at 3:10 p.m. Her motion was seconded by Mr. Wilson, and carried 7-0 (Beatty, Brewer, Owens, and Plumlee absent).

The meeting reconvened in open session at 3:29 p.m.

VII. STAFF ITEMS – No such items were presented.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR NOVEMBER, 2013

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	November 7, 2013
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	November 7, 2013
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	November 14, 2013
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	November 21, 2013
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	November 27, 2013

- X. ADJOURNMENT – There being no further business, Chairman Cravens declared the meeting adjourned at 3:30 p.m.